

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JULY 24 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0094-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ROBERT ODEL GOETH, JR.,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-34532

Honorable John F. Kelly, Judge

REVIEW GRANTED; RELIEF DENIED

Robert O. Goeth, Jr.

Buckeye
In Propria Persona

P E L A N D E R, Chief Judge.

¶1 Petitioner Robert Odel Goeth, Jr. was convicted after a 1992 jury trial of three counts of aggravated assault with a deadly weapon or dangerous instrument. The trial court sentenced Goeth in 1994 to consecutive prison terms totaling twenty-seven years, including one aggravated term. We affirmed Goeth's convictions and sentences on appeal, *State v. Goeth*, No. 2 CA-CR 94-0461 (memorandum decision filed Oct. 17, 1995), and denied

relief on the trial court's denial of his four subsequent petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. *State v. Goeth*, No. 2 CA-CR 97-0213-PR (memorandum decision filed Aug. 18, 1998); *State v. Goeth*, No. 2 CA-CR 2004-0354-PR (decision order filed May 26, 2005); *State v. Goeth*, No. 2 CA-CR 2005-0375-PR (memorandum decision filed May 12, 2006); *State v. Goeth*, No. 2 CA-CR 2005-0424 (memorandum decision filed May 12, 2006). In 2007, Goeth filed his fifth petition for post-conviction relief. This pro se petition for review follows the trial court's summary dismissal of that petition. We will not disturb a trial court's denial of post-conviction relief absent a clear abuse of the court's discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). We find none here.

¶2 To the extent we understand Goeth's argument, he claims that, based on newly discovered evidence, the trial court should have vacated the twelve-year, aggravated sentence imposed on count three for assault with a deadly weapon or dangerous instrument. The trial court correctly found Goeth's claim precluded because he "base[d] his argument on facts contained in the record . . . [and h]e fail[ed] to cite any newly discovered material facts which could not have been discovered previously through the exercise of due diligence." *See* Ariz. R. Crim. P. 32.1(e) and 32.2(a)(3); *see also State v. Mata*, 185 Ariz. 319, 333, 916 P.2d 1035, 1049 (1996) ("Simply because defendant presents the court with evidence for the first time does not mean that such evidence is 'newly discovered.'"). In addition, to the extent Goeth suggests for the first time on review that trial and appellate counsel were

ineffective in having failed to raise this argument in a timely manner, we reject his claim. We will not consider any issue on which the trial court has not first had an opportunity to rule. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). Moreover, because Goeth has previously raised claims of ineffective assistance of counsel, he is precluded from doing so now. *See Ariz. R. Crim. P. 32.2(a)(3)*; *see also Mata*, 185 Ariz. at 334, 916 P.2d at 1050 (preclusion rule “prevents a defendant from endlessly raising claims he has raised before” and from “endlessly litigat[ing] effectiveness of counsel”).

¶3 Therefore, although we grant the petition for review, we deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge